

REMARKS:

Claims 1, 2, 4, 13, 15, 17-22, 24-25, and 27-31 were pending in this application. Claims 1, 2, 15, 17, 18, 20, 22, 24, and 29-31 have been amended. Thus claims 1, 2, 4, 13, 15, 17-22, 24, 25, and 27-31 remain pending.

The amendments are supported by both the specification of the present case and by provisional application 60/409,792 (filed 9/11/02), from which this application claims priority. Support for the amendments to the claims can be found throughout the present specification, including (but not limited to) ¶¶0036–0042. Support for the amendments to the claims can be found throughout the ‘792 provisional application, including (but not limited to) pages 14–16.

Examiner Interview

Applicant thanks the Examiner for the interview conducted on July 6, 2010. During the interview, Applicant’s undersigned representative discussed the present amendments to claim 1. The Examiner agreed that these amendments distinguished over the cited art for reasons discussed below. (In a subsequent conversation on July 16, 2010, the Examiner clarified that he plans to conduct an updated search upon submission of this response, and that his agreement was contingent on the results of this search. *See* Interview Summary of July 15, 2010.)

Art-Based Rejections

All pending independent claims in the case stand rejected under 35 U.S.C. § 102(e) as being anticipated by Brocco et al. (U.S. Patent No. 6,996,658; hereinafter “Brocco”). Office Action at 2. Without conceding the propriety of these rejections, Applicant has amended the claims to advance prosecution of the case.

Applicant first submits that Brocco does not anticipate the amended claims, as Brocco fails to teach each and every element of the claims as amended. *See* MPEP § 2131. For example, Brocco fails to teach, as recited by claim 1, that “for a multicast packet to be routed,” a “switch is configured to receive the multicast packet and transmit one or more copies of the multicast packet, respectively, on one or more of [a] plurality of ports based on multicast group information contained in the multicast packet and based on multicast routing information maintained by the switch, wherein the multicast routing information includes a plurality of entries corresponding to a plurality of multicast groups” (emphasis added). Although Brocco

mentions a “multicast distribution,” *see* Brocco at col. 11, line 58, and also mentions “multi-cast frames,” *see id.* at col. 7, line 36 and at col. 9, line 14, Brocco does not teach, for example, “transmit[ing] one or more copies of [a] multicast packet ... based on multicast routing information maintained by the switch ... [that] includes a plurality of entries corresponding to a plurality of multicast groups,” as recited by claim 1. For at least the reasons above, Brocco thus does not anticipate claim 1. Further, though independent claims 2, 15, 18, and 20 vary in scope from claim 1, Applicant submits that for at least similar reasons to those argued above, Brocco also fails to anticipate these independent claims. Applicant therefore respectfully requests withdrawal of the § 102 rejections of independent claims 1, 2, 15, 18, and 20, and withdrawal of all rejections of their dependent claims.

Applicant additionally submits that no proposed combination involving Brocco may be used to show that the claims are obvious under 35 U.S.C. § 103(a), as Brocco is precluded from being used as obviousness art in accordance with 35 U.S.C. § 103(c). Section 103(c)(1) states that a reference “shall not preclude patentability” under § 103 where:

- (i) The reference “qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102”; and
- (ii) “[T]he subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

See id. In this case, both the first and second portions of § 103(c)(1) are met.

First, Brocco appears to qualify as prior art only under 35 U.S.C. § 102(e). Brocco was issued from U.S. Application No. 10/152,656, filed on May 21, 2002. The present application claims priority to the ‘792 provisional that was filed less than one year later on September 11, 2002 (and thus § 102(b) is not applicable).¹ Second, Applicant submits that both Brocco and the present application were, at the time the claimed invention was made, owned by or subject to an obligation of assignment to the same entity. *See, e.g.*, Assignment recorded November 26, 2002 in the ‘656 application, and Assignment recorded January 15, 2004 in the present application.

¹ As noted above, the present claims are supported by the provisional ‘792 application and are thus entitled to a priority date of at least September 11, 2002.

Applicant therefore submits, for at least the reasons above, that the cited Brocco reference is unavailable as a reference under 35 U.S.C. § 103(c), and thus it would be improper for the Examiner to use Brocco as a reference under § 103(a) in a future action.

CONCLUSION:

Applicant respectfully submits the application is in condition for allowance for at least the reasons stated above, and an early notice to that effect is requested.

If any extensions of time are necessary to prevent the above-referenced application from becoming abandoned, Applicant hereby petitions for such extension.

The Commissioner is authorized to charge any fees that may be required, or credit any overpayment, to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account No. 501505/6257-14502/AAC.

Respectfully submitted,

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